

national forest has been canceled by order of the Department, it will be held that such matter is closed, and is not subject to subsequent motion or order before or by the Department.

(b) This rule is applicable to an entry within a national forest regularly canceled by the Bureau of Land Management in the absence of an appeal. No such entry will be reinstated by direction of the Bureau of Land Management.

EXCEPTION IN FINAL CERTIFICATE AND PATENT OF TELEPHONE LINES, ROADS, TRAILS, BRIDGES, ETC., MAINTAINED AND OPERATED BY THE UNITED STATES UPON THE PUBLIC LANDS, INCLUDING NATIONAL FOREST LANDS

§ 205.12 *When exception will be made; procedure.* In cases where telephone lines, roads, trails, bridges, fire lanes, cabins, fences, or other improvements have been actually constructed upon the public lands of the United States, including national forest lands, and are being maintained and operated by the United States, and the Bureau of Land Management is furnished with appropriate maps or field notes by the Department of Agriculture so prepared to enable it to definitely locate the constructed line, proper notation thereof should be made upon its records.

§ 205.13 *Preliminary survey is insufficient to warrant exception in final certificate or patent.* A mere preliminary survey, which might or might not be later followed by construction, is not an appropriation of the land to the public use which will warrant insertion of an exception in a final certificate or patent.

Some action, indicating upon the ground itself that the tract has been devoted to the public use, is necessary, such as staking the area to be retained by the United States, accompanied by a setting aside of a sufficient part of the appropriation for construction. In other words, the case should be one of either actual construction, or in which the evidence shows that the construction has been provided for, and will be immediately undertaken.

Part 206—National Parks and National Monuments

CROSS REFERENCES: For exchanges to eliminate private holdings from national parks, see Part 150, of this chapter. For sale of public lands for cemeteries, see Part 253, of this chapter. For State grants for park purposes, see Part 270, of this chapter. For National Park Service, Department of the Interior, see Parks and Forests, 36 CFR Chapter I. For regulations of the American Battle Monuments Commission relating to national cemeteries abroad, see Parks, Forests, and Memorials, 36 CFR Part 403.

PROCEDURE ON APPLICATION OR PROOF FOR LANDS WITHIN NATIONAL PARK OR RESERVATION FOR NATIONAL MONUMENTS

§ 206.1 *Action by manager on entries or proofs.* When any application to make entry or proof is filed in the land office for lands within any national park or within any reservation of lands for national monument, the manager will immediately notify the superintendent or custodian thereof by regular mail. (R. S. 2478; 43 U. S. C. 1201) [19 F. R. 9048, Dec. 23, 1954]

SUBCHAPTER N—OFFICERS AND ABSTRACTERS

Part 210—Officers and Employees

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- 210.14 Penalty for violation of the rules.

AUTHORITY: §§ 210.1 to 210.14 issued under R. S. 2478; 43 U. S. C. 1201. Statutes interpreted or applied are cited to text in parentheses.

SOURCE: §§ 210.1 to 210.14 appear at 19 F. R. 9048, Dec. 23, 1954.

CROSS REFERENCES: For abstracters, see Part 211 of this chapter. For cases in which requirements as to oaths have been eliminated, see § 101.18 of this chapter. For right of attorneys and agents to act as notaries, see § 221.85 of this chapter. For regulations relating to general practice, see Parts 220 to 223 of this chapter. For regulations relating to practice in Alaska, see Part 73 of this chapter. For regulations governing practitioners, see Part I of this title.

OFFICERS AUTHORIZED TO ADMINISTER OATHS IN PUBLIC LAND CASES

§ 210.1 *Officers qualified; statement and certificate of official character required in certain cases.* (a) Oaths required under the homestead, preemption,¹ timber-culture,¹ desert-land, and timber and stone acts may, in States for which there is a land office, be made before the manager or the acting manager of the land office for the district embracing the land sought; or before any of the following officers inside the county, parish, or land district embracing the land sought, namely, a United States commissioner, a notary public, a judge, a clerk, or a prothonotary of a court of record, a deputy of such clerk or prothonotary, or a magistrate authorized by the laws of or pertaining to the State to administer oaths; or before any such officer outside the county and the land district embracing the land sought who because of geographic or topographic conditions may be the qualified officer nearest to the land or most accessible from it. In States for which there is no land office,

the required oaths may be made before any qualified officer in the State.

(b) The official character of any officer not using a seal of office, other than a manager or an acting manager, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. If, in States for which there is a land office, an oath be administered outside the county and the land district embracing the land sought, the applicant must show by a statement, satisfactory to the Bureau of Land Management, that the oath was made before an officer who because of geographic or topographic conditions was the qualified officer nearest to the land sought or most accessible from it. Such showing, however, will not be required as part of the final proof if the proof be taken in the town or city in which the newspaper printing the final proof notice is published.²

(c) The papers in cases arising under the statutes above specified must be filed in the land office for the district embracing the land sought, if there be any such office; otherwise in the Bureau of Land Management in Washington, D. C. An application is not acceptable if dated more than 10 days before being deposited in the mails for filing in the appropriate office.

(R. S. 2294, as amended, 44 Stat. 830; 43 U. S. C. 254, 5 U. S. C. 92a)

§ 210.2 *Time and place for transaction of business by the manager.* Applications to make entry cannot be received by the manager out of office hours, nor elsewhere than at his office, nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

RULES TO BE OBSERVED IN ADMINISTERING OATHS AND TAKING FINAL PROOFS

§ 210.3 *Identity of applicant to be established prior to administering oath.* No oath in support of any application, entry, proof, or claim to public lands should be administered to any stranger until he has first been reliably made known and identified to the officer ad-

¹ The preemption and timber-culture laws were repealed by the act of March 3, 1891 (26 Stat. 1095; 43 U. S. C. 1181, 1197), with certain exceptions specified in that act.

² 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

ministering it as the identical person he represents himself to be.

§ 210.4 *Jurat not attached until affidavit is complete and oath administered.* No jurat or certificate should be attached to any oath, affidavit, application, proof, or other written statement affecting public lands until such oath, affidavit, application, proof, or statement has been fully written out and completed, and until all blank spaces in any blank form prescribed or used therefor shall have been fully filled out or erased, and not then until after the same has been sworn to and signed by the affiant before and in the presence of the attesting officer and fully read by or made known to the affiant.

§ 210.5 *Manner in which final proof should be made; continuance.* Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a. m. and 6 p. m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof can not be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

CROSS REFERENCE: For proofs, generally, see Part 106 of this chapter.

§ 210.6 *Protests and adverse claims.* Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal, should be allowed to appear for that purpose on the day advertised, or upon any succeeding day to which the case may be continued. If any person

appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the manager for his consideration and action.

§ 210.7 *Officer to obtain full and complete answers and report to the manager.* All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the manager with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the manager of any facts not set out in the testimony which in his judgment cast suspicion upon the good faith of the applicant or the validity of the entry.

§ 210.8 *Testimony of each claimant and witness to be taken separate and apart from and not within the hearing of the others.* The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

§ 210.9 *Parties and witnesses to be advised of laws and penalties for false swearing.* Officers taking affidavits and

testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

§ 210.10 *Proof officer to transmit papers to the manager.* The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the manager. In no case should the transmittal thereof be left to the claimant.

§ 210.11 *Fees for administering oath, preparation of paper and writing out testimony; penalty.* No fee in excess of 25 cents can be lawfully charged or received for administering the oath to any affidavit, application, proof, or any other written statement affecting public lands; but there is no restriction on the fee the officer may charge for preparation of any paper, except that the total amount to be received for taking and writing out the final proof testimony of a claimant or of a witness, and administering the oath thereto, shall not exceed the sum of \$1. Any officer demanding or receiving greater sums than are here specified for such services will be subject to indictment and punishment under amended section 2294 of the Revised Statutes (43 U. S. C. 254).

§ 210.12 *Officer shall not aid in the wrongful or illegal acquisition or use of public lands.* No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

§ 210.13 *Officer taking affidavits, proofs, etc., should not participate in purchase, sale, mortgage, exchange, lease, or relinquishment of the lands involved.* No officer authorized to take final proofs should, either for himself or as agent, attorney, or representative of another, induce or attempt to induce any owner, entryman, or other person to purchase, sell, mortgage, exchange, lease, or relinquish any lands which are involved, may be involved, or have been involved in any

affidavit, or proof, executed before him, and he should not, either for himself or as agent for any other person, in any manner solicit or make to any entryman, owner, or claimant any loan or attempted loan the payment of which is to be secured by a lien or mortgage upon such lands; and he should not be or remain a member or stockholder of any copartnership or company which shall, either directly or indirectly, be interested in or benefited by any such sale, mortgage, exchange, lease, relinquishment, or loan, nor accept nor receive in any manner any fee, commission, compensation, emolument, or benefit arising therefrom, except for the lawful discharge of his official duties.

§ 210.14 *Penalty for violation of the rules.* Any officer violating any of the rules set forth in §§ 210.3 to 210.14 may be deprived of the right of further taking final proofs, and when any commissioner has so offended his action may be called to the attention of the court by which he was appointed, with appropriate recommendations. All managers and area administrators have been charged to use their utmost diligence in seeing that the rules in §§ 210.3 to 210.14 are fully and in good faith complied with, and directed to investigate and fully report any apparent violations thereof which may come to their notice.

Part 211—Abstracters

§ 211.1 *Evidence of title.* Evidence of title, when required by the regulations, must be submitted in such form and by such abstractor or company as may be satisfactory to the Bureau of Land Management. A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract, in proper cases, when issued by a title company. A policy of title insurance when furnished must be free from conditions and stipulations not acceptable to the Department of the Interior. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit and where the interests of the Government will be sufficiently protected thereby.

(R. S. 2478; 43 U. S. C. 1201) [19 F. R. 9049, Dec. 23, 1954]

CROSS REFERENCE: For evidence of title in mining cases, see § 185.54 of this chapter.